

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012070572

v.

LIVE OAK ELEMENTARY SCHOOL
DISTRICT, and SANTA CRUZ COUNTY
OFFICE OF EDUCATION

LIVE OAK ELEMENTARY SCHOOL
DISTRICT,

OAH CASE NO. 2012120475

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING REQUEST FOR
RECONSIDERATION, GRANTING
REQUEST TO CONTINUE, AND
SETTING PREHEARING CONFERENCE
AND DUE PROCESS HEARING

On December 5, 2012, the undersigned administrative law judge issued an order granting a continuance and ordering that no further continuances would be granted without a showing of substantial good cause. The order further directs that the retention of new counsel for Student and the unavailability of Student's counsel due to a conflict with the scheduled hearing dates would not constitute substantial good cause. On December 28, 2012, Student filed a request for a continuance on the grounds that Student has been unable to retain counsel available to participate in the current prehearing conference (PHC) and hearing dates, and that one attorney is willing to represent Student if a brief continuance is granted. Student's continuance request is deemed a motion for reconsideration of the December 5, 2012 order. On December 31, 2012, the Live Oak Elementary School District (District) filed an opposition to the motion, as did the Santa Cruz County Office of Education (County) on January 2, 2013.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, §

11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

DISCUSSION

Student alleges new facts and circumstances in support of the request for reconsideration as follows: Student has contacted many attorneys in an effort to secure representation; Student has been unable to locate counsel who is willing to take his case and who is available for the current PHC and hearing dates; and Student has identified one attorney who is willing to represent him if OAH grants a brief continuance as specified in an attached letter from Attorney Roberta Savage. Student has timely filed the request for reconsideration after unsuccessfully attempting to retain counsel in the weeks prior to the holiday season, and attaches a letter dated December 28, 2012, in support of his request.

On reconsideration, the undersigned also takes into account the additional fact that the District subsequently filed its own request for a due process hearing naming Student on December 11, 2012. On December 18, 2012, OAH granted the District's motion to consolidate the two matters while maintaining the previously set hearing dates. This change of circumstance along with Student's multiple unsuccessful attempts to retain counsel for the current PHC and hearing dates, merit reconsideration of the prior order. The filing of District's case, which Student has to defend, and the consolidation of the matters, adds a level of complexity to this litigation which was not present when the undersigned issued the December 5, 2012 order. Having considered all of these factors, the unavailability of Student's identified counsel due to a conflict with the current hearing dates does constitute a showing of substantial good cause for a further continuance. Accordingly, Student's request for reconsideration is Granted. Student's request for continuance is also granted.

ORDER

1. Student's Request for Reconsideration is Granted.
2. The consolidated matter is continued and all dates are vacated. The PHC shall be held on February 4, 2013 at 3:00 p.m.¹ The Due Process Hearing shall be held on February 25, 2013 at 1:30 p.m. and February 26 through 28, 2013 at 9:00 a.m.

¹ Ms. Savage indicates she is unavailable for hearing on February 4, 2013, due to a PHC in another OAH matter scheduled for 1:30 p.m. This matter will be specially set for a PHC at 3:00 p.m. on February 4, 2013, the date previously set for hearing.

3. At the PHC counsel may further address scheduling issues.²

Dated: January 3, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

² District has indicated that its counsel may have a conflict on the dates requested by Student due to another OAH matter. The parties shall be prepared to address the issue at the PHC, if District's conflict remains.